

02/05/2025

CENTRAL DISTRICT OF CALIFORNIA
BY: KSS DEPUTY

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA *ex*
rel. [UNDER SEAL],

Plaintiff[s],

v.

[UNDER SEAL],

Defendant[s].

No. CV 17-03263-PA (JCx)

REQUEST OF THE UNITED STATES
TO PARTIALLY UNSEAL CASE;
DECLARATION OF FRANK D.
KORTUM

**[FILED UNDER SEAL PURSUANT TO
THE FALSE CLAIMS ACT, 31 U.S.C.
§§ 3730(b)(2) AND (3)]**

[LODGED CONCURRENTLY UNDER
SEAL: [PROPOSED] ORDER]

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA and
STATE OF CALIFORNIA *ex rel.* M.
LAKHANI,

Plaintiffs,

v.

VINROD K. GUPTA, M.D., THE
HEART CENTER OF SOUTHERN
CALIFORNIA,

Defendants.

No. CV 17-03263-PA (JCx)

REQUEST OF THE UNITED STATES
TO PARTIALLY UNSEAL CASE;
DECLARATION OF FRANK D.
KORTUM

**[FILED UNDER SEAL PURSUANT TO
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§§ 3730(b)(2) AND (3)]**

[LODGED CONCURRENTLY UNDER
SEAL: [PROPOSED] ORDER]

1 Although this Court dismissed this action following the United States' declination
2 to intervene in the action, there has been an outstanding issue of whether the Court
3 should: (1) unseal the Complaint filed by the *qui tam* plaintiff M. Lakhani ("Relator");
4 and (2) maintain under seal all other papers filed or lodged to date filed by the United
5 States, except for the United States Notice of Election to Decline Intervention.

6 The sealing provisions of the federal False Claims Act are for the sole benefit of
7 the United States. *See* 31 U.S.C. §§ 3730(b)(2) and (3). The Fourth Circuit recognized
8 that the sealing provisions of the FCA: (1) permit the United States to determine whether
9 it already was investigating the fraud allegations; (2) permit the United States to
10 investigate the allegations to decide whether to intervene; (3) prevent an alleged
11 fraudster from being tipped off about an investigation; and (4) protect the reputation of a
12 defendant in that the defendant is named in a fraud action brought in the name of the
13 United States, but the United States has not yet decided whether to intervene. *Am. Civil*
14 *Liberties Union v. Holder*, 673 F.3d 245, 249–50 (4th Cir. 2011) (citing S. Rep. No. 99-
15 345, at 24–25 (1986)).

16 Given that the United States already declined to intervene, the United States
17 respectfully requests that:

18 1. Relator's Complaint (including any amended complaints), the United
19 States' Notice of Election to Decline Intervention, this Request, and the accompanying
20 [Proposed] Order be unsealed;

21 2. All other papers filed or lodged to date in this action remain permanently
22 under seal because such papers were provided by law to the Court for the sole purpose of
23 discussing the content and extent of the government's investigation so that the Court
24 could evaluate whether the seal and the deadline for making an election to intervene
25 should be extended; and

26 3. Any future papers filed or lodged in this action should not be filed under
27 seal absent a separate court order.

1 Counsel for Relator did not respond to an e-mail message notifying him that the
2 United States intended to seek the relief set forth above. The e-mail message was sent to
3 him on January 28, 2025

4
5 Dated: January 29, 2025

Respectfully submitted,

6 JOSEPH T. MCNALLY
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DECLARATION RE: LACK OF NECESSITY FOR PROOF OF SERVICE

I, Frank D. Kortum, declare:

1. I am the Assistant United States Attorney who has been assigned responsibility for handling the above-captioned action. I am a member of the Bar of the State of California, and I have been duly admitted to appear before this Court. The following is based on my personal knowledge.

2. I have examined Federal Rule of Civil Procedure (“Rule”) 5(a), which provides as follows:

(a) Service: When Required.

(1) In General. Unless these rules provide otherwise, each of the following papers must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

(2) If a Party Fails to Appear. No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

(3) Seizing Property. If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

3. The list of documents set forth in Rule 5(a)(1) does not include the document to which this Declaration is attached. The said document also is not a pleading that asserts “a new claim for relief” against any “party who is in default for failing to appear.” (Rule 5(a)(2).) Nor was the above-captioned action “begun by seizing property.” (Rule 5(a)(3).) Therefore, I believe that Rule 5(a) does not require the document to which this Declaration is attached to be served upon any party that has appeared in the above-captioned action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 29, 2025, at Los Angeles, California.

Frank Kortum

FRANK D. KORTUM